IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.7976/06
Habib Khan Vs. Board of Revenue & Ors.

1.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri V.K. Jain for petitioner.

Heard learned counsel for the petitioner.

The petitioner has challenged the order passed by the Board of Revenue dated 20.7.2006 whereby his appeal against the judgment dated 9.3.1998 passed by the Revenue Appellate Authority, Kota was dismissed and the judgment and decree dated 4.2.1997 passed by SDO, Aklera was upheld. The learned Board of Revenue came to hold that legal representatives of Bano Bai was the co-

shares with respondents nos. 8, 9 & 10 before the Board of Revenue with ¼th share of the disputed property.

Learned counsel for the petitioner argued that the petitioner was bona fide purchaser of the land in dispute and Bano Bai had surrendered her interest in the property. He sought to base his argument on the mutation entry Annexure-4 and note to this effect has been made by the Patwari on 14.6.1993. It was argued that while on one hand three brothers of the Bano Bai had sold the entire property to the petitioner including her 1/4th share on the other, when Bano Bai filed the suit before the Court of SDO under Section 53 of the Rajasthan Tenancy Act, they did not contest the proceedings and the judgment/

decree was passed in their absence and therefore he had to file an appeal before the Revenue Appellate Authority. Revenue Appellate Authority as well as the Board of Revenue failed to appreciate that there was no case in favour of the Bano Bai / her legal representatives and appropriate course for them was to remand the matter to the SDO and rehear it again afresh.

Having heard the learned counsel for the petitioner and perused the three orders, I find that there is no dispute in so far as the fact that Bano Bai was co-sharer having the entitlement of ¼th share of the disputed land of khasra no.158 measuring 5 bighas and 13 biswas and this fact not been denied even by learned counsel for the petitioner. He

however contends that when the mutation was entered in favour of her brothers, Bano Bai had abandoned her claim and therefore they were competent to sell not only their own share of the land but also the share of Bano Bai. I am not persuaded to accept this argument because the first Court had found that Bano Bani had the share in the property and therefore she was entitled to be recorded as tenant in so far as 1/4th share was concerned. The Revenue Appellate Authority and Board of Revenue have categorically recorded that three brothers of Bano Bai had no right to sell ¼ share of Bano Bai therefore it was found that the judgment and decree passed by first court were correctly passed.

Learned counsel for the

petitioner at this stage submitted that petitioner being bona fide purchaser should not be made to suffer even if the brother of Bano Bai had sold her share to them. The petitioner, if he so advised, is always free to proceed against them in appropriate proceedings for recovery of the sale consideration in respect of the aforesaid share. But so far as the impugned orders are concerned, I do not find that any of them suffer from any error so as to warrant interference by this Court.

The petition stands dismissed.

(Mohammad Rafiq),J.

Rs/-